
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

MICHAEL T. BARBER,

Petitioner,

versus

WARDEN MARTIN,

Respondent.

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CIVIL ACTION NO. 1:10-CV-37

**MEMORANDUM ORDER OVERRULING PETITIONER’S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Petitioner Michael T. Barber, an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends that the above-styled petition should be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes Petitioner’s objections are without merit.


As explained in the report, Petitioner is not entitled to credit for the time he requests. Petitioner’s confinement in state custody occurred prior to the commencement of his federal sentence. Further, Petitioner is not entitled to credit for time spent in state custody because his

confinement was unrelated to his federal charges, and he has failed to show he did not receive credit toward his state sentence. See 18 U.S.C. § 3585.¹ Alternatively, if the BOP had not made a determination concerning the computation of petitioner's time credits before he filed this petition, the petition is dismissed for lack of jurisdiction. See *Pierce v. Holder*, No. 08-50435, 2010 WL 3093307, at *1 (5th Cir. Aug. 9, 2010).

ORDER

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 9th day of September, 2010.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

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Any claim that the United States Marshal acted improperly does not affect the fact or duration of Petitioner's confinement because his release from state confinement was not delayed by such action. Accordingly, any such claim must be pursued by filing a civil rights action. See *Presser v. Rodriguez*, 411 U.S. 475, 500, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973); *Jackson v. Johnson*, 475 F.3d 261, 263 n.2 (5th Cir. 2007); *Cook v. TDCJ Transitional Planning Depot*, 37 F.3d 166, 168 (5th Cir. 1994).